

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

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F'REAL FOODS, LLC and RICH : CIVIL ACTION
PRODUCTS CORPORATION, :
 :
Plaintiffs, :
 :
vs. :
 :
HAMILTON BEACH BRANDS, :
INC., HERSHEY CREAMERY :
COMPANY and PAUL MILLS :
d/b/a MILLS BROTHERS :
MARKETS, :
 : NO. 16-41 (CFC)
Defendants. : CONSOLIDATED

- - -

Wilmington, Delaware
Tuesday, November 27, 2018
10:00 o'clock, a.m.
***Telephone conference

- - -

BEFORE: HONORABLE COLM F. CONNOLLY, U.S.D.C.J.

- - -

APPEARANCES:

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
BY: MICHAEL J. FLYNN, ESQ.

-and-

Valerie J. Gunning
Official Court Reporter

1 **APPEARANCES (Continued) :**

2 **SIDEMAN & BANCROFT LLP**

3 **BY: GUY W. CHAMBERS, ESQ.**

4 **(San Francisco, California)**

5 **Counsel for Plaintiffs**

6 **f'real Foods, LLC and Rich Products**
7 **Corporation**

8 **DRINKER BIDDLE & REATH LLP**

9 **BY: FRANCIS DiGIOVANNI, ESQ.**

10 **-and-**

11 **DRINKER BIDDLE & REATH LLP**

12 **BY: WILLIAM S. FOSTER, JR., ESQ.**

13 **(Washington, D.C.)**

14 **Counsel for Defendant**

15 **- - -**

1 I think there's going to be cross-motions for summary
2 judgment, so both sides are going to have oppositions due on
3 January 11th and then replies on January 25th, as I
4 understand it.

5 THE COURT: No, that's true, but I'm going by
6 the defendants' schedule, so I didn't even ask them if they
7 could meet it. I'm assuming the defense can meet this
8 schedule since they proposed it.

9 Mr. Foster?

10 MR. DiGIOVANNI: Your Honor, this is
11 Mr. DiGiovanni. I guess the one point we would have with
12 regard to that schedule is, we had proposed that in
13 conjunction with our proposal for a limitation on the number
14 of claims that were asserted by plaintiff, and we had our
15 meet and confers. We had back and forths since your last
16 hearing, Your Honor, and we did not come to an agreement,
17 although we did seem to make some progress.

18 We would still ask for that in time to be able
19 to file the summary judgment motion in December. So we are
20 still asking Your Honor for a limitation on the number of
21 claims.

22 THE COURT: Okay. So where are we right now on
23 the number of claims?

24 MR. CHAMBERS: Yes. This is Guy Chambers. We
25 exchanged e-mails and I think made significant progress. We

1 propose having a telephone conference meet and confer
2 tomorrow to try to finalize an agreement.

3 One of the sticking points was the number of
4 prior art combinations, and Mr. Flynn can help me on this,
5 but I think there were 267 or something like that, but we
6 were making progress and we're going to be proposing to work
7 some more on it tomorrow.

8 MR. FOSTER: Your Honor, this is Bill Foster.
9 So originally I proposed again 12 claims at the status
10 conference. There was a little back and forth. Last
11 Tuesday I proposed 12 claims, no more than five claims per
12 patent, and then I agreed to limit ourselves to 36
13 combinations based on some other models that were done in
14 the case.

15 Today at 9:44, plaintiffs responded to that
16 e-mail from last Tuesday and said let's have a talk
17 tomorrow. We're going to need to act expeditiously on this
18 given that we now have to file summary judgment on
19 December 14th. So I mean something has to be done this
20 week.

21 THE COURT: Actually, I think that's fair,
22 Mr. Foster. I mean, you know, Mr. Chambers, I'm really
23 trying to be mindful of how long this case has been sitting
24 and what kind of prejudice that can cause to a plaintiff,
25 but you need to give soon -- I mean, frankly, why not right

1 now? Why can't you just agree to something that would be
2 much more reasonable going forward so that -- December 14th
3 is not long off, and in fairness to the defense to put
4 together a brief, I guess I'm at a loss as to why this is
5 taking so long to accomplish.

6 MR. CHAMBERS: Okay. So where we were at, and
7 this was pursuant to this model Federal Circuit order
8 Mr. Foster sent to me, we were willing to drop from the 29
9 where we're at to 16, and that should do the trick, I would
10 think.

11 THE COURT: Mr. Foster, if he dropped to 16, is
12 that good enough?

13 MR. FOSTER: Your Honor, we can work with that.
14 The one thing Mr. Flynn said to me, there was an order in
15 this court where they said 16 claims is 48 combinations. If
16 that's the case, we can agree on that.

17 THE COURT: Okay. That sounds reasonable to me.

18 Mr. Flynn?

19 MR. FLYNN: Yes. Your Honor, I think, you know,
20 we can work out the details, but, you know, the other thing
21 that at this stage before summary judgment, we don't think
22 there should be a per patent limit on claims.

23 We have -- one of the patents, there's one claim
24 asserted. The other, I think there's three claims asserted.
25 You know, if we go to 16 claims, most of those cuts are

1 going to come from one patent, so we don't think there needs
2 to be a per patent limit.

3 THE COURT: Wait. I guess maybe I
4 misunderstood. I didn't hear. Did Mr. Foster ask for a per
5 patent limit?

6 MR. FOSTER: Your Honor, I previously asked
7 for five claims per patent when it was 12 claims, the
8 proposal.

9 THE COURT: Well, I mean, I guess I am at a
10 loss. Why does it matter per patent? Why isn't it overall
11 number of claims?

12 MR. FOSTER: Your Honor, just a matter of
13 dependent claims, and there's some redundancy in the '377
14 patent. We have the same exact claim constructions for all
15 the independent claims with respect to the grinding, shaving
16 and aeration. There's just a lot of redundancy in the
17 dependent claims.

18 THE COURT: Right, but if -- hold on. This may
19 be a stupid question, but even if there's redundancy,
20 doesn't that help the defense, not the plaintiff?

21 MR. FOSTER: We get down to 16 claims? We don't
22 do more than five claims, or you can do ten claims in one
23 patent.

24 THE COURT: No.

25 MR. FOSTER: I'm not sure, Your Honor.

1 THE COURT: Yes, but you don't do -- if there

2 are redundancies, then isn't it limiting the number of

3 claims per patent not really a concern?

4 MR. CHAMBERS: This is Guy Chambers. I think I

5 can move this whole thing because the claims that we're

6 going to be cutting are going to be largely from this patent

7 that Mr. Foster is complaining about, the '377 patent,

8 though I think that's going to moot the issue.

9 I think before -- I don't think we need to get

10 into any more he said/she said today. I think I just need

11 to send him the list in the next few days of the 16 claims

12 and that should be the end of it.

13 THE COURT: Well, see, here's the problem, Mr.

14 Chambers. The problem with that is, in the next few days, I

15 mean, Mr. Foster just pointed out, I know it was

16 Thanksgiving, but they sent you something on Tuesday. You

17 just got back to him this morning. Again, I know it's

18 Thanksgiving. But if this drags on, then the next thing,

19 you know, the December 14th date goes, and if it goes, and

20 then --

21 MR. CHAMBERS: How about if I do it by Friday?

22 THE COURT: That seems to me to be potentially

23 too late. December 14th is two weeks from Friday.

24 MR. CHAMBERS: All right. Thursday? Today is

25 Tuesday.

10:44:23 1 THE COURT: Yes.

10:44:24 2 MR. CHAMBERS: So that's two days to drop -- it
10:44:28 3 would be 13 claims.

10:44:29 4 THE COURT: Okay. So let me make sure I
10:44:31 5 understand. You are saying by Thursday you'll get them --
10:44:35 6 you'll reduce your case to what? How many claims, how many
10:44:38 7 patents, or how many claims per patent?

10:44:42 8 MR. CHAMBERS: There's going to be four patents
10:44:45 9 in the case.

10:44:45 10 THE COURT: Right.

10:44:46 11 MR. CHAMBERS: I will get it down to 16 claims
10:44:48 12 in his proposed Federal Circuit order.

10:44:50 13 THE COURT: All right. Mr. Foster, can you live
10:44:52 14 with that? That seems to be pretty generous.

10:44:57 15 MR. FOSTER: That's fine.

10:44:58 16 THE COURT: Mr. Chambers, you'll get them out by
10:45:00 17 the close of business Thursday and then we'll stick with the
10:45:04 18 December 14th opening briefs, and everybody hopefully will
10:45:08 19 be mindful of the various admonitions I made earlier.

10:45:14 20 And then, Mr. Flynn, you'll get me a scheduling
10:45:17 21 order that's going to reflect all the dates that we've just
10:45:18 22 discussed. Is that right?

10:45:20 23 MR. FLYNN: Yes, Your Honor.

10:45:21 24 THE COURT: And you'll use the November 14th
10:45:23 25 revised form, and the only thing that will be unusual, and I